

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DONALD C. HUTCHINS

Plaintiff

v.

CARDIAC SCIENCE, INC.

Defendants

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Civil Action: 04-30126-MAP

**DEFENDANT COMPLIENT CORPORATION'S REPLY IN SUPPORT OF MOTION
TO STRIKE AMENDED COMPLAINT**

On August 16, 2006, Defendant, Compliant Corporation ("Compliant"), filed its Motion to Strike the Amended Complaint filed by Plaintiff, Donald C. Hutchins on August 23, 2006. In his Memorandum in Opposition to the Motion to Strike, Hutchins incorrectly implied that he had asked for and been granted leave to file his Amended Complaint. Although this Court granted Hutchins leave to file an amended complaint in December 2004, that grant of leave is not perpetual and does not give Hutchins free reign to amend his complaint as he sees fit, whenever he pleases. Leave had not been granted to Hutchins to amend his complaint again, at this late stage in the litigation. Moreover, justice requires that such leave be denied in any event for the reasons set forth in Compliant's Motion to Strike.

Moreover, in his Memorandum in Opposition, Hutchins refers to a motion for sanctions that he filed in the state court action that Compliant filed against Hutchins in Ohio. Hutchins filed the motion on August 8, 2006. It was meritless and based on unsupported, fabricated claims raised by Hutchins in an effort to defame Compliant and its attorneys and create an appearance of impropriety where none exists.¹ Inexplicably, the court initially granted the motion for sanctions on August 15, before the expiration of Compliant's time to respond.

However, the Ohio court has vacated its sanctions order. On August 18, the day its attorneys received notice of the court's order, Compliant sensed that Hutchins' motion was granted in error and immediately filed a Motion for Reconsideration. The court quickly granted Compliant's Motion for Reconsideration and vacated its order for sanctions on August 23. See Judgment Entry, attached hereto at Exhibit A. It is unclear whether the court's initial order granting the motion for sanctions was the result of a clerical error, an internal miscommunication, or something else, but the court has swiftly and decisively overturned that erroneous decision.² Hence, there is no order of sanctions against Compliant or its attorneys in any court, and the "malicious acts" to which Hutchins refers never occurred.

¹ Essentially, in his motion, Hutchins alleged that Compliant's attorneys had held improper ex parte communications with the Ohio court's staff. In fact, no such communications ever took place and were completely imagined by Hutchins.

² In fact, the Ohio court's Judgment Entry granting the motion for sanctions provided no reasoning but, instead, simply and matter of factly stated that the motion was granted. It provided no explanation. Thus, Hutchins' claims that the court had "recognized [Compliant's] injudicious acts," etc., were pure speculation, and, in any event, are now irrelevant given that the court has corrected its ruling.

Accordingly, for the foregoing reasons, as well as those set forth in Compliant's original Motion to Strike, Hutchins' Amended Complaint should be stricken.

Respectfully submitted,

s/ Jeffrey J. Lauderdale

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CERTIFICATE OF SERVICE

I certify that, on August 31, 2006, I electronically filed a copy of the foregoing Defendant Compliant Corporation's Motion for Leave to File Instanter Reply in Support of Motion to Strike Amended Complaint and that parties to the case, registered with the Court's electronic filing system, will receive electronic notice of such filing. A copy of the foregoing was also served upon the following via first-class U.S. mail on today's date:

Donald C. Hutchins
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Pro Se

s/ Jeffrey J. Lauderdale
One of the Attorneys for Defendant,
Compliant Corporation

EXHIBIT

A



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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO



COMPLIANT CORPORATION
Plaintiff

Case No: CV-04-540066

Judge: EILEEN A GALLAGHER

DONALD C. HUTCHINS, ET AL
Defendant

JOURNAL ENTRY

THE COURT HEREBY VACATES ITS 8/15/06 RULING THAT GRANTED DEFENDANT'S 8/7/06 MOTION FOR RULE 11(C)(1)(B) SANCTIONS.

DEFENDANT'S 8/7/06 MOTION FOR RULE 11(C)(1)(B) SANCTIONS IS HEREBY DENIED.

Judge Signature

Date

RECEIVED FOR FILING

AUG 23 2006

GERALD E. FUERST, CLERK
By P. Hutch Deputy